PATENT

Atty Docket No.: 200309423-1
App. Ser. No.: 10/757,323

REMARKS

Favorable reconsideration of this application is respectfully requested in view of amendments above and the following remarks. Claims 1-22 are pending of which claims 1, 9, 13 and 18 are independent.

Claims 1-7 were rejected under 35 U.S.C. §103(a) as being unpatentable over Dumas et al., A Probabilistic Approach to Automated Bidding in Alternative Auctions ("Dumas"), in view of Hemiermann (7,110,976) ("Hemiermann").

Claim 8 was rejected under U.S.C. 103(a) as being unpatentable over Dumas, in view of Hemiermann and further in view of Jarvis, US. Pub 2004/0006503 ("Jarvis").

Claims 9-13, 15, 18-19 and 21 were rejected under U.S.C. 103(a) as being unpatentable over Dumas in view of Jarvis.

Claims 14 and 16-17 were rejected under U.S.C 103(a) as being unpatenable over Dumas in view of Jarvis and in further view of Cooper, U.S. (5,809,282) ("Cooper").

Claims 20 and 22 are rejected under U.S.C. 103(a) as being unpatenable over Dumas in view of Jarvis and further in view of Hemiermann.

Drawings

The office action did not indicate whether the formal drawings filed with the application are accepted. Please indicate whether the drawings are accepted in the next communication.

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Claim Rejections Under 35 U.S.C. §103(a)

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S._, 82 USPQ2d 1385 (2007):

> "Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented." Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

> (A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) "Obvious to try"—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S._, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co./v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006), "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness."

Furthermore, as set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, "[a]ll claim limitations must be considered" because "all words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385.

If the above-identified criteria and rationales are not met, then the cited references fail to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited references.

1. Claims 1-7 were rejected under 35 U.S.C. §103(a) as being unpatentable over Dumas in view of Hemiermann.

Claim 1 recites a multiple lot auction. Dumas in view of Hemiermann fails to teach or suggest a multiple lot auction. A multiple lot auction is clearly defined in paragraph 12 of the Applicants' specification. Paragraph 12 recites,

> A multiple lot auction comprises a plurality of lots wherein each lot contains one or more goods or services on which to bid. The individual lots may vary by the quantity of a single item. For example, lot A may contain 60 units of 20 gigabyte hard disk drives while lot B may contain 40 units of 20 gigabyte hard disk drives. The lots also may vary by the items contained therein. For example, lot C may contain 70 units of 40 gigabyte hard disk drives, while lot D may contain 70 units of 80 gigabyte hard disk drives.

On page 99, column 2, paragraph 3, Dumas discloses that each auction is assumed to be for a single item and to have a fixed deadline. Ebay provides examples of many of these

types of auctions. A single item auction is for a single item, rather than for a plurality of lots wherein each lot contains one or more goods or services. Accordingly, Dumas fails to teach or suggest this feature.

In the overview section 2.1 of Dumas on page 100, column 1, Dumas discloses a set of relevant auctions are identified. However, each auction is a separate and distinct auction for a single item. It appears the rejection is equating multiple, distinct, single item auctions as a multiple lot auction. However, this interpretation is inconsistent with the definition of a multiple lot auction as is known in the art and defined in the specification. A single item auction does not include a plurality of lots wherein each lot contains one or more goods or services. One benefit of a multiple lot auction is that a seller can use a single auction to sell multiple lots. In Dumas, the buyer is identifying multiple single item auctions from different auction houses that are auctioning the same good, so the buyer can win one of the auctions to get the best price. Thus, the single item auction and the multiple lot auction are fundamentally different and the benefits of the multiple lot auction and the plurality of single item auctions in Dumas are different.

Claim 1 also recites,

> simulating the multiple lot auction using the next set of bids and a sequencing rule until simulated bidding on all lots is closed;
> simulating the multiple lot auction using a different sequencing rule until bidding on all lots is closed
> ... wherein the sequencing rules determine how closing times for accepting any bids are ordered among each of the lots.

Dumas fails to teach or suggest a sequencing rule and a second, different sequencing rule. Paragraph 1 of the Applicants' specification defines a sequencing rule as follows: "Sequencing rules determine how the closing times are ordered among the various lots [in a

multiple lot auction]." Thus, a sequencing rule is inherently related to a multiple lot auctions, because the rule determines closing times for each different lot in the auction. Because Dumas fails to teach or suggest a multiple lot auction, Dumas also fails to teach or suggest a sequencing rule.

As described on page 99, column 2, paragraph 3 of Dumas, each auction is assumed to have a "fixed deadline". Thus, the closing time for each auction does not change and there is only one closing time and no sequence rule for each auction. There are not two sequence rules for an auction in Dumas.

The rejection alleges the sequencing rules are disclosed on page 100, column 1, paragraph 3 and page 104, column 1, paragraphs 4-5. However, these paragraphs disclose a series of experiments that were conducted to validate the probabilistic bidding approach described in Dumas. There is no disclosure in these paragraphs related to closing times for bids in a multiple lot auction, or using a sequencing rule to simulate bidding on all lots in a multiple lot auction.

Dumas discloses on page 100 in column 2 that bids are successively placed on each auction until one of them is successful. Thus, a bidder will not bid on and the bidder will not win two auctions, because a bid is only placed on a successive auction if the bid on the prior auction is not won. This successive bidding is not related to different closing times for multiple lots in a single auction. Furthermore, claim 1 recites sequencing rules determine how closing times for accepting any bids are ordered among the lots. The successive bidding of Dumas is for placing bids rather than for accepting bids. Also, the successive bidding of Dumas does not affect the closing time for an auction. The closing time is the same regardless of whether the bidder wins or looses.

Hemiermann does not remedy the deficiencies of Dumas and thus also fails to teach or suggest the features described above. Accordingly, claims 1-7 are believed to be allowable.

2. Claim 8 was rejected under U.S.C. 103(a) as being unpatentable over Dumas in view of Hemiermann and further in view of Jarvis.

Claim 8 is believed to be allowable for at least the reason claim 1 is believed to be allowable.

3. Claims 9-13, 15, 18-19 and 21 were rejected under U.S.C. 103(a) as being unpatentable over Dumas in view of Jarvis.

Independent claim 9 recites a multiple lot auction and two sequencing rules for simulating the multiple lot auction. Independent claim 13 recites a multiple lot auction and simulating a multiple lot auction using a plurality of sequencing rules. Independent claim 18 recite a multiple lot auction and sequencing bidding one each of the plurality of lots in accordance with a first sequencing rule. Furthermore, the independent claims state that sequencing rules determine how closing times for accepting any bids are ordered among the lots. None of these features are taught or suggested by Dumas in view of Jarvis, and claims 9-13, 15, 18-19 and 21 are believed to be allowable.

4. Claims 14 and 16-17 were rejected under U.S.C 103(a) as being unpatenable over Dumas in view of Jarvis and in further view of Cooper.

Claims 14 and 16-17 are believed to be allowable for at least the reasons their respective independent claim is believed to be allowable.

5. Claims 20 and 22 are rejected under U.S.C. 103(a) as being unpatenable over Dumas in view of Jarvis and further in view of Hemiermann.

Claims 20 and 22 are believed to be allowable for at least the reasons their respective independent claim is believed to be allowable.

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Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: December 21, 2007 By

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